

The Division of State and Local Operations (SLO)¹, Wahab Onitiri and John Patten request enforcement of the layoff rights determined by SLO for Trenton's September 16, 2011 layoff.

In its request, SLO indicates that certain layoff determinations that it made were not being followed by Trenton. Specifically, SLO contends that Patten was determined to have demotional title rights to Water Meter Reader but was demoted to Laborer by Trenton.² Additionally, SLO asserts that Wahab Onitiri was determined to have lateral displacement rights to the title of Supervisor Traffic Maintenance but was demoted by Trenton to the title of Laborer Heavy. Further, SLO claims that provisional employees David Briegel, Henry Page and Charles Hall were determined to be separated from their provisional positions as Water Meter Readers but were retained in that title by Trenton. Onitiri and Patten submit letters confirming SLO's assertions. Moreover, SLO argues that it has attempted to contact Trenton to have it comply with the layoff determinations but has been unable to reach a resolution.

In response, Trenton, represented by Steven Glickman, Esq., argues that it has been its long standing policy to have employees work below their current title due to the needs of the City without a reduction in pay. It contends that its actions were appropriate and in accordance with Civil Service rules and regulations.

CONCLUSION

N.J.A.C. 4A:8-1.1(b) provides that this agency shall determine seniority, and shall designate lateral, demotional and special reemployment rights for all career service titles prior to the effective date of the layoff and have such information provided to affected parties. Additionally, *N.J.A.C.* 4A:3-3.4 states that no person shall be appointed or employed under a title not appropriate to the duties to be performed nor assigned to perform duties other than those properly pertaining to the assigned title which the employee holds, unless otherwise provided by law or these rules. Further, *N.J.A.C.* 4A:10-1.1(b) provides that no person or appointing authority shall fail to comply with an order of the Commission. Moreover, *N.J.A.C.* 4A:10-2.1(a)2 provides that the Commission may assess costs, charges and fines not to exceed \$10,000 for non-compliance with a Commission order.

In the instant matter, SLO provided Trenton with its determinations of layoff rights for employees affected by Trenton's September 16, 2011 layoff action. Trenton has not followed SLO's determinations. That has led to Patten and Onitiri

¹ SLO is now the Division of Classification and Personnel Management.

² SLO's request also included Timothy London and Edmund Johnson. However, London and Johnson were subsequently terminated.

being placed in Laborer titles, and provisional employees not being separated from their positions. Trenton's rationale for these actions is that it has been its long standing policy to have employees work below their current title due to the needs of the City without a reduction in pay. However, the Commission finds that Trenton's policy is improper and violates Civil Service law and rules. Trenton cannot make its own layoff determination rights to move employees. Outside of the layoff procedures, the only permitted manner to demote an employee would be with the employee's consent or via the disciplinary process. Here, the employees neither consented to being demoted nor were they disciplined. Further, *N.J.A.C. 4A:3-3.4* prohibits Trenton from keeping the employees in the higher title but assigning them duties not commensurate with their titles. Therefore, the Commission orders that Trenton place Patten in the Water Meter Reader title and Onitiri in the Supervisor Traffic Maintenance title, and assign them duties consistent with those titles. Further, Trenton is ordered to separate Briegel, Page and Hall from their provisional positions as Water Meter Readers.

The Commission is specifically given the power to assess compliance costs and fines against an appointing authority, including all administrative costs and charges, as well as fines of not more than \$10,000, for noncompliance or violation of Civil Service laws or rules or any order of the Commission. *N.J.S.A. 11A:10-3; N.J.A.C. 4A:10-2.1(a)2. See In the Matter of Fiscal Analyst (M1351H), Newark, Docket No. A-4347-87T3 (App. Div. 1989)*. Thus, in the event that Trenton does not comply with the Commission order within 20 days of issuance of this decision, it is ordered that the appointing authority be assessed a fine of \$100 per day, beginning on the 21ST day after issuance of this decision, until Trenton fully complies with this decision, up to a maximum of \$10,000.

ORDER

Therefore, it is ordered that Trenton place John Patten in the Water Meter Reader title and Wahab Onitiri in the Supervisor Traffic Maintenance title, and assign them duties consistent with those titles. Further, the Commission orders that David Briegel, Henry Page and Charles Hall be separated from their provisional positions as Water Meter Readers.

In the event that the appointing authority has not made a good faith effort to comply with this decision within 20 days of issuance of this decision, the Commission orders that a fine be assessed against the appointing authority in the amount of \$100 per day, beginning on the 21ST day from the issuance of this decision, and continuing for each day of continued violation, up to a maximum of \$10,000.

This is the final administrative determination in this matter. Any further review should be pursued in a judicial forum.